IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.M 129 of 2005.
in
FAMILY COURT APPEAL (ST) NO.10030 OF 2005

Mrs. Jyoti Prakash Haswani ..Applicant.

Versus

Mr.Prakash P. Haswani ..Respondent

Applicant in person.
Mr.Vivek Kantawala on behalf of Kantwala & Co. for the respondent

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 5th July, 2005

P.C.

1. Heard.

2. This is an application for condonation of delay in filing the Family Court Appeal. The delay is of 206 days. Basically the Applicant has filed a Maintenance Application No.C-112 of 2002 in the Family Court at Bandra. The said proceeding is under Section 18 of the Hindu Adoption and Maintenance Act and thereby the Petitioner is seeking monthly amount of maintenance at the rate of Rs.15,000/-. She has also claimed maintenance and the Educational fees, Tuition fees and maintenance for her son at the rate of Rs.10,000/- p.m. etc. In the said maintenance application, interim application Exhibit 8 was preferred seeking interim

relief pending the application under Section 18 of the Hindu Adoption and Maintenance Act. The said interim application was rejected on the ground that the marriage between the Petitioner and the Respondent has already been dissolved under the Application No.847 of 1998 and the maintenance has been granted. Thus, the Trial Court has come to the finding that the Applicant was not legally wedded wife on the date of presentation of the application under Section 18 of the Hindu Adoption and Maintenance Act. Since the marriage was dissolved, the Trial Court has rejected the said application by order dated 11.8.2004. In view of this, on Exhibit 1 the learned Trial Judge has passed order holding that the Petition is not maintainable. The said orders are the subject of challenge before this Court in the present Family Court Appeal. However, there is delay of 206 days in filing the Family Court Appeal.

3. We would like to make it clear that the decree passed in Application No.487 of 1998 decided by the Family Court has not yet obtained finality. The said decree has been challenged by the Petitioner wife by filing Appeal No.33 of 2004 which is admitted. The Family Court Appeal is in continuation of the said divorce proceeding. Therefore the initial proceeding for divorce is yet in continuation and the decree has not obtained finality. We cannot rule out the possibility that the decree of divorce being set aside

and equity being confirmed. All will depend upon the appreciation of evidence in the said matter. Suffice it to say that at this stage the said decree has not become final and the proceeding is yet pending before this Court and it will be inappropriate at this stage to hold that the Application under Section 18 of the Hindu Adoption and Maintenance Act is not tenable because in case the decree is set aside and the application for divorce is dismissed by this Court in the Appeal, the Application under Section 18 of the Hindu Adoption and Maintenance Act will be very much maintainable. Therefore, we find that the Trial Court has proceeded hastily in the matter while disposing off the maintenance application holding that the same is not maintainable.

4. In fact, the Trial Court could have taken the note of all these things and could have kept the matter pending on sine die list till final disposal of this appeal. Why such course is not selected by the Trial Court is not known. Therefore, taking into consideration the overall view of the matter, even though we find that there is no valid reason for condonation of delay, in the interest of justice our interference is very much necessary and, therefore, we condone the delay. We are also in favour of setting aside the order passed by the Family Court at Exhibit 8 and Exhibit 1 of C-112 of 2002.

5. In view of the appraisal of all the above facts, both parties have given consent to the Court to dispose of the matter finally at this stage only with further direction to the Family Court to keep the matter restored on its file as sine die with liberty to the parties to move the matter after the Appeal No.33 of 2004 is disposed off. In view of above, we proceed to pass the following order:

ORDER

The Office is directed to number the Appeal.

Civil Application No.129 of 2005 is hereby allowed. Petition No.C-112 of 2000 and the order passed by the Family Court below Exhibit 8 and Exhibit 1 in Appeal.No.A-847 of 1998 on 11.8.2004 are hereby quashed and set aside.

The Family Court is directed to keep this proceeding alive in abeyance on sine die list till the final disposal of Appeal No.33 of 2004.

Liberty to both parties to move this matter after the decision in Appeal No.33 of 2004. We have considered the matter technically and restored it.

All the contentions of the parties are kept open, if occasion arises, to contest the

application under Section 18 of the Hindu Adoption and Maintenance Act.

(S.R.SATHE, J.) (S.B.MHASE,J.)